



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R10–RCRA–2016–0629; FRL 9928-27-Region 10]

Determination of Full Program Adequacy of Washington’s Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Under the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, States must develop and implement permit programs for Municipal Solid Waste Landfills (MSWLFs) and seek an adequacy determination by the Environmental Protection Agency (EPA). This rule documents EPA's determination that Washington's MSWLF permit program is adequate to ensure compliance with Federal MSWLF requirements.

DATES: This direct final rule will become effective [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives adverse comments on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If written adverse comments are received, the EPA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-RCRA-2016-0629 by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: calabro.domenic@epa.gov
- Fax: (206) 553-6640, to the attention of Domenic Calabro
- Mail: Send written comments to Domenic Calabro, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AW-150, Seattle, WA 98101.
- Hand Delivery or Courier: Deliver your comments to: Domenic Calabro, Office of Air and Waste, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AW-150, Seattle, WA 98101. Such deliveries are only accepted during the Office's normal hours of operation.

Instructions: Identify your comments as relating to Docket ID No. EPA-R10-RCRA-2016-0629.

The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you

submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/dockets/>.

Docket: EPA has established a docket for this action under Docket ID No. EPA-R10-RCRA-2016-0629. All documents in the docket are listed on the www.regulations.gov Web site.

Although it may be listed in the index, some information might not be publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the U.S. Region 10 Library, 1200 Sixth Avenue, Seattle, Washington by appointment only; please telephone (206) 553-1289 to make an appointment.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Mailcode: AW-150, Seattle, Washington, 98101 Attn: Mr. Domenic Calabro.
Telephone: (206) 553-6640.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On October 9, 1991, the Environmental Protection Agency (EPA) promulgated the "Solid Waste Disposal Facility Criteria: Final Rule" (56 FR 50978). That rule established part 258 of Title 40 of the Code of Federal Regulations (CFR). The criteria set out in 40 CFR part 258 include

location restrictions and standards for design, operation, groundwater monitoring, corrective action, financial assurance, and closure and post-closure care for MSWLFs. The 40 CFR part 258 criteria establish minimum Federal standards that take into account the practical capability of owners and operators of MSWLFs while ensuring that these facilities are designed and managed in a manner that is protective of human health and the environment. Section 4005(c)(1)(B) of subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, requires States to develop and implement permit programs to ensure that MSWLFs comply with the 40 CFR part 258 criteria. RCRA section 4005(c)(1)(C) requires EPA to determine whether the permit programs that States develop and implement for these facilities are adequate.

To fulfill this requirement to determine whether State permit programs that implement the 40 CFR part 258 criteria are adequate, EPA promulgated the State Implementation Rule (SIR) (63 FR 57025, Oct. 23, 1998). The SIR, which established part 239 of Title 40 of the CFR, has the following four purposes: (1) lay out the requirements that State programs must satisfy to be determined adequate; (2) confirm the process for EPA approval or partial approval of State MSWLF permit programs; (3) provide the procedures for withdrawal of such approvals; and (4) establish a flexible framework for modifications of approved programs.

Only those owners and operators located in States with approved permit programs for MSWLFs can use the site-specific flexibility provided by 40 CFR part 258, to the extent the State permit program allows such flexibility. Every standard in the 40 CFR part 258 criteria is designed to be

implemented by the owner or operator with or without oversight or participation by EPA or the State regulatory agency. States with approved programs may choose to require facilities to comply with the 40 CFR part 258 criteria exactly, or they may choose to allow owners and operators to use site-specific alternative approaches to meet the Federal criteria. The flexibility that an owner or operator may be allowed under an approved State program can provide a significant reduction in the burden associated with complying with the 40 CFR Part 258 criteria. Regardless of the approval status of a State and the permit status of any facility, the 40 CFR Part 258 criteria shall apply to all permitted and unpermitted MSWLFs. As EPA explained in the preamble to the revised Federal MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the revised Federal MSWLF criteria.

To receive a determination of adequacy for a MSWLF permit program under the SIR, a State must have enforceable standards for new and existing MSWLFs. These State standards must be technically comparable to the 40 CFR part 258 criteria. In addition, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in RCRA section 7004(b). Finally, the State must demonstrate that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved permit program. EPA expects States to meet all of these requirements for all elements of a permit program before it gives full approval to a State's program.

On April 9, 1993, Washington submitted an application to obtain a partial program adequacy determination for the State's MSWLF permit program under Section 4005 of RCRA. EPA reviewed Washington's application and published a determination of partial program adequacy on March 31, 1994 (FR Vol. 59, No. 62) for those portions of the MSWLF permit program that were adequate to ensure compliance with the revised Federal MSWLF criteria. Washington made amendments to Chapter 173-351 of the Washington Administrative Code, which became effective in November 2012 and November 2015. On June 16, 2016, Washington submitted to EPA an amended application which incorporated the amendments, seeking a determination of full program adequacy for Washington's MSWLF permitting program. The amended application included a detailed description of changes made to Washington's MSWLF permitting program since the March 31, 1994 EPA determination of partial program adequacy. Specifically, Washington addressed the following portions of its MSWLF permit program that were not approved in the March 31, 1994 determination of partial program adequacy:

- 1) Revised the definitions of *Existing MSWLF Unit* and *Lateral Expansion*, per the federal regulations found in 40 CFR 258.2.
- 2) Eliminated equivalent and arid liner designs in the state rule, retained composite liner requirements, and incorporated an option for alternate liner design, consistent with federal regulations.
- 3) Revised the rules to require monitoring for total metals in groundwater.
- 4) Adopted revisions to Appendix 3 of WAC 173-351-990 to include two hazardous organic constituents: 2,3,7,8-Tetrachlorodibenzo- p-dioxin - [CAS 1746-01-6] and alpha, alpha-

Dimethylphenethylamine [CAS 122-09-8]. This revision affects landfills that are required to perform assessment monitoring under the rule, and is necessary to be consistent with federal rules in 40 CFR Part 258.

5) Adopted new post-closure care period criteria, which are based on potential risk to human and environmental receptors, per 40 CFR Part 258.61(b).

6) Made revisions to allow for issuance of Research, Development, and Demonstration (RD&D) landfill permits, pursuant to the 2004 rulemaking by EPA (69 FR 13242, March 22, 2004).

Washington Assistant Attorney General, Jonathan C. Thompson, certified in a letter dated June 10, 2016 that the regulations cited in the Washington Department of Ecology's Amended Application for Municipal Solid Waste Facilities Program Determination of Adequacy were enacted and full effective at the time of the application and will continue to be when the state's permit program is fully approved.

II. DECISION

In addition to those portions of the State's MSWLF permit program that were approved on March 31, 1994, EPA has determined that the State's revised MSWLF permit program will ensure adequacy with the Federal criteria in 40 CFR Part 258. In addition, Washington has demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement. After reviewing Washington's amended application, EPA has concluded that Washington's MSWLF permit program meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted a determination of full program adequacy for its MSWLF permitting program.

By finding that Washington's MSWLF permit program is adequate, EPA does not intend to affect the rights of Federally-recognized Indian Tribes in Washington, nor does it intend to limit the existing rights of the State of Washington. RCRA section 4005(a) provides that citizens may use the citizen suit provisions of RCRA section 7002 to enforce the 40 CFR part 258 criteria independent of any State enforcement program.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new Information Collection Request (ICR) burden under the PRA. The purpose of this action is to approve amendments to Washington's MSWLF permitting program which result in it meeting all of the statutory and regulatory requirements established by RCRA. The OMB has previously approved the information collection activities contained in the ICR for 40 CFR part 239, Requirements for State Permit Program Determination of Adequacy and part 258, MSWLF Criteria. This action does not impose any additional reporting requirements.

C. Regulatory Flexibility Act (RFA)

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule will not create any additional burden for small entities. Small entities are not required to take any action as a consequence of this rule, and this action will not have a significant impact on a substantial number of small entities. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. The costs involved in this action are imposed only by voluntary participation in a federal program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The EPA has concluded that this action will have no new tribal implications, nor would it present any additional burden on the tribes. It will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Washington has incorporated those requirements from the Federal MSWLF landfill criteria (40 CFR Part 258) not found in Washington's existing program and EPA has determined that Washington's program includes terms and conditions that are at least as protective as the MSWLF landfill criteria for municipal solid waste landfills, to assure protection of human health and the environment.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental
Justice in Minority Populations and Low-Income Populations

The purpose of this action is to approve amendments to Washington's MSWLF permitting program which result in it meeting all of the statutory and regulatory requirements established by RCRA. The EPA believes that the human health and environmental risk addressed by this action will not have a new disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects:

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Authority:

This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: October 20, 2016.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

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